BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED
MAR 25 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Assessment and Collection of	)	MD DOCKET NO. 96-186
Regulatory Fees for Fiscal Year 1997	)	

To: The Commission

COMMENTS OF MONTANA BROADCASTERS ASSOCIATION

The Montana Broadcasters Association ("Montana"), representing the licensees of approximately 130 Montana broadcast stations, submits herewith its comments in response to the Notice of Proposed Rule Making in MD Docket No. 96-186, FCC 97-49, released March 5, 1997 ("NPRM").[1]

Beginning with FY 1995, Montana has urged the Commission, without success, to adopt a regulatory fee schedule for AM and FM stations that takes cognizance of the size of the market in which a station is located. The failure to take market size into consideration has placed an unfair burden on small market radio stations. As Montana has pointed out several times in the past, a Class C FM station in Red Lodge, Montana, a community with a population of less than 2,500, pays the same regulatory fee as a Class B FM station in New York City, with a population approaching 8,000,000. Given the ability of larger market stations to generate much

[1] 62 Fed. Reg. 10,793 (March 10, 1997).

No. of Copies rec'd 0+9
List ABCDE

more advertising revenue, it is inequitable to continue assessing radio regulatory fees strictly on the basis of technical facility groupings.[2]

In response to Montana's comments in the proceeding leading to the adoption of the FY 1996 regulatory fee schedule, the Commission issued a Notice of Inquiry in MD Docket No. 96-186, 11 FCC Rcd 15,459 (1996) ("NOI"), to explore the possibility of adopting a methodology to reflect market size in establishing regulatory fees for AM and FM stations.[3]

In comments and reply comments with respect to the NOI, Montana sought to further refine its proposed regulatory fee schedule. Through the comments it now submits, Montana presents a further refinement of its proposal. The schedule Montana presents herein is calculated to generate the aggregate regulatory fee revenue for radio stations called for in Attachment E of the NPRM.

---

[2] It is well documented that larger market stations garner the lion's share of radio industry revenues. Data compiled by BIA Publications, a leading broadcast financial research firm, confirmed that in 1995 radio stations in the top 20 markets earned 40.7% of the nation's total radio revenue. Stations in Markets 21-50 garnered 16.6%. Stations in markets 51-100 received another 11.1%. Thus, radio stations in the top 100 markets received 68.4% of all radio revenue. See BIA Publications, Inc., State of the Industry -- Radio 1996, p. 34.

[3] In the NOI, the Commission presented a regulatory fee schedule based on a hybrid of Montana's proposed FY 1996 fee schedule and the Congressionally mandated FY 1996 fee schedule for television stations. The hybrid schedule appears in Paragraph 6 of the NOI and Paragraph 31 of the NPRM. Montana notes that this schedule alters the ratios between the fee for the lowest technical facility grouping (Class C AM) and those for the two FM groupings. The result of this alteration is to skew the regulatory fee burden toward AM stations and away from FM stations. The fee structure Montana proposes would maintain the same ratios between AM and FM technical facility groupings as used by Congress for FY 1994, but would create within each technical facility group to reflect four market-size classifications. See p. 5 and n. 6 below.

BACKGROUND

In FY 1994, 1995, and 1996, the regulatory fee schedules for licensed commercial radio stations distinguished between six technical facility groupings. Each of the four classes of AM stations (A, B, C, and D) was in a different technical grouping. The fifth technical grouping consisted of higher powered FM stations (Classes C, C1, C2 and B). The final grouping was comprised of lower powered FM stations (Classes C3, B1 and A).

As of FY 1994, the ratios between the technical facility grouping paying the lowest fee, Class C AM stations, and other technical facility groupings were as follows:

FIGURE 1

Radio Regulatory Fee Ratios Between Class C AM Stations and Stations in Other Technical Facility Classifications[4]

Class D AM	1.25
Class B AM	2.50
Class A AM	4.50
FM Group I (Classes C, C1, C2 and B)	4.50
FM Group II (Classes A, B1 and C3)	3.00

As noted previously, no distinction has been drawn on the basis of the size of the market in which a radio station was located. But Congress has signaled the importance of market size. Since the beginning of the regulatory fee program, Congress has dictated that television stations, for regulatory fee purposes, be classified according to the type of station (VHF or UHF) and

[4] Because of various adjustments in the regulatory fee schedule and rounding, the ratios between radio technical facility groupings for FY 1996 were slightly different but close to those used in the original FY 1994 regulatory fee schedule.

according to one of five market size classifications: Markets 1-10, 11-25, 26-51, 51-100 and the "Remaining Markets."

On April 26, 1996, the President signed "The Balanced Budget Downpayment Act," P.L. No. 104-134, which established a new television regulatory fee schedule for FY 1996. The new fee schedule significantly raised fees for stations in the top 50 markets and significantly lowered fees in the Remaining Markets. The ratios between the FY 1996 regulatory fee for Remaining Market television stations and those in larger markets were as follows:

FIGURE 2

Television Regulatory Fee Ratios Between "Remaining Market" Stations and Larger Market Stations

MARKET	VHF	UHF	AVERAGE
1-10	12.80	12.50	12.65[5]
11-25	10.40	10.00	10.20[5]
26-50	6.80	6.50	6.65
51-100	3.60	3.50	3.55

MONTANA'S PROPOSAL

Montana urges the Commission to adopt a radio regulatory fee structure that reflects both differences in (a) technical facilities, using the same groupings and ratios Congress used in FY 1994, and (b) market size, using approximately the same ratios Congress used for television stations in FY 1996. Below is a chart reflecting the proposed ratios between the regulatory fee

[5] The average ratio for Markets 1-25 is 11.43.

for a station that should be in the lowest fee category (a Remaining Market Class C AM station), and the regulatory fee for stations falling into other market and technical facility groupings.[6]

FIGURE 3

Proposed Ratios between the Regulatory Fee for a "Remaining Market" Class C AM Station and for Radio Stations in Other Fee Categories

MARKETS	AM CLASS A	AM CLASS B	AM CLASS C	AM CLASS D	FM GROUP I	FM GROUP II
1-25	51.44	28.58	11.43	14.29	51.44	34.29
26-50	29.93	16.63	6.65	8.31	29.93	19.95
51-100	15.98	8.88	3.55	4.44	15.98	10.65
Remaining	4.5	2.50	1.00	1.25	4.50	3.00

In order to develop a full fee schedule, after establishing a ratio grid, one must estimate the number of stations in each fee grouping. In its reply comments with respect to the NOI, Montana presented a revised "station count" derived from DataWorld Inc.'s MediaXpert™ database. Using that station count, with minor further refinements,[7] Montana presents the

[6] Montana proposes that four market size classifications be used: Markets 1-25, 26-50, 51-100 and Remaining Markets. The market size fee ratio between the "Remaining Markets" and the top 25 markets would be an average of the ratios used in Markets 1-10 and 11-25 for VHF and UHF television stations. As indicated in n. 5 above, that average ratio is 11.43. The ratio in the chart are derived by multiplying the appropriate technical facility grouping ratio (see Figure 1) by the appropriate average market group ratio (see Figure 2 and n. 5). For example, the ratio for a Class B AM station in Markets 1-25 is calculated by multiplying 2.5 by 11.43, which equals 28.58.

[7] See n. 8 below.

following proposed fee structure which is calculated to generate $11,416,095 in regulatory fee revenue, approximately 5.31% higher than that projected in Attachment E of the NPRM.

FIGURE 4

Proposed Regulatory Fee Schedule and Estimated Revenue Using a Base Fee (i.e., for Class C AM station) of $215

FEE CATEGORY	ESTIMATED PAYMENT UNITS[8]	PROPOSED FEE[9]	ESTIMATED REVENUE
AM Class A Markets 1-25	14	$11,050	$154,700
AM Class A Markets 26-50	9	$6,425	$57,825
AM Class A Markets 51-100	9	$3,425	$30,825
AM Class A Remaining Markets	78	$970	$75,660

[8] Derived from DataWorld Inc.'s MediaXpert™ Database and estimated payment units as listed in Attachment C of the NPRM. (Specifically, to arrive at the number of Remaining Market payment units with respect to each technical facility grouping, the number of stations in Markets 1-25, 26-50 and 51-100, as determined by DataWorld, has been subtracted from the total payment units for that technical facility grouping as listed in Attachment C of the NPRM.)

[9] Pursuant to 47 U.S.C. §159(b)(2), fees under $1,000 are rounded to the nearest $5.00 and fees of $1,000 or more are rounded to the nearest $25.00.

FEE CATEGORY	ESTIMATED PAYMENT UNITS	PROPOSED FEE	ESTIMATED REVENUE
AM Class B Markets 1-25	62	$6,150	$381,300
AM Class B Markets 26-50	57	$3,575	$203,775
AM Class B Markets 51-100	137	$1,900	$260,300
AM Class B Remaining Markets	1,097	$540	$592,380
AM Class C Markets 1-25	14	$2,450	$34,300
AM Class C Markets 26-50	14	$1,425	$19,950
AM Class C Markets 51-100	30	$765	$22,950
AM Class C Remaining Markets	1,070	$215	$230,050
AM Class D Markets 1-25	32	$3,075	$98,400
AM Class D Markets 26-50	33	$1,775	$58,575
AM Class D Markets 51-100	65	$955	$62,075
Class D Remaining Markets	1245	$270	$336,150
AM Construction Permits[10]	38	$140	$5,320

[10] Montana proposes that the regulatory fees for construction permits be the same as in FY 1996.

FEE CATEGORY	ESTIMATED PAYMENT UNITS	PROPOSED FEE	ESTIMATED REVENUE
FM Construction Permits	307	$690	$211,830
FM Classes C, C1, C2, B Markets 1-25	160	$11,050	$1,768,000
FM Classes C, C1, C2, B Markets 26-50	198	$6,425	$1,272,150
FM Classes C, C1, C2, B Markets 51-100	300	$3,425	$1,027,500
FM Classes C, C1, C2, B Remaining Markets	1746	$970	$1,693,620
FM Classes A, B1, C3 Markets 1-25	47	$7,375	$346,625
FM Classes A, B1, C3 Markets 26-50	62	$4,300	$266,600
FM Classes A, B1, C2 Markets 51-100	153	$2,300	$351,900
FM Classes A, B1, C2 Remaining Markets	2878	$645	$1,856,310

Total Estimated Revenue: $11,416,095

In the NPRM, the Commission expressed concern regarding the accuracy of Montana's calculations because of possible changes in the number of stations in each fee grouping. But it must be remembered that any projection as to the number of payment units that will be within a particular fee classification must be based on an estimate. The actual number of stations paying a regulatory fee in a given year will, inevitably, vary from the estimate. Montana urges that the estimates prepared on the basis of the DataWorld station count reasonably can be expected to generate at least sufficient revenue to meet the requirements for AM and FM stations set forth in Attachment E of the NPRM. The total number of stations projected to pay a fee is the same as used by the Commission in developing its projections for FY 1997. See NPRM, Attachments B and C. If it turns out that more stations then estimated are in Markets 1-100, the effect will be collection of more revenue than estimated, not a shortfall. In subsequent years, the fee schedule can be adjusted to reflect the number of stations within each fee category that actually tendered payment the previous year.

Montana's proposed schedule is not overly complicated or difficult to administer. Montana proposes that the most recent Arbitron radio Metro Market definitions be used. Whether a station is within a particular market would be determined by the location of the station's transmitter. That is, if a station's transmitter is located within the area defined as comprising a particular Arbitron Metro Market, it would be deemed to be in that market for regulatory fee purposes. Montana believes that licensees within the top 100 markets already know or quickly can determine whether their transmitter sites are within Arbitron Metro Markets. Moreover, Montana's counsel has met with DataWorld representatives regarding the capability of preparing a document listing each licensed commercial station and the specific fee category into which it falls. DataWorld's executives have reported that the preparation of such a document could be accomplished in a matter of weeks. Montana suggests that the Commission contract with DataWorld to prepare such a report for use in connection with adoption of the fee schedule proposed herein. That listing could be made available to licensees through the FCC's internet home page and used by Commission Fee Hotline personnel to answer specific questions that arise.[11]

In sum, Montana strongly urges the Commission to eliminate the anomaly whereby a station in one of the nation's largest markets winds up paying the same fee as a station in a sparsely populated rural area simply because both stations are in the same technical facility grouping. To continue use of the same methodology implemented in previous fiscal years will place an unfair portion of the regulatory fee burden on small market stations.

MONTANA BROADCASTERS ASSOCIATION

By ______________________

William R. Reier, Chairman
Regulatory Fees Committee

Counsel:

Reddy, Begley & McCormick
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

March 25, 1997

[11] Of course, a licensee that found its listing to be in error could tender, with its correct regulatory fee, documentation verifying the proper fee category for the station in question.

MBM\PLEADING\COMMENTS.MBA